IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

DEMETRIC RICE, Plaintiff, vs. MARK IV AUTOMOTIVE, Defendant.	)	No. 01-1255

ORDER ON OBJECTIONS TO MAGISTRATE'S
REPORT AND RECOMMENDATION

Plaintiff Demetric Rice, *pro se*, filed a complaint under Title VII, 42 U.S.C. § 2000e-5, against his former employer, Mark IV Automotive. Defendant was served with process but failed to answer or otherwise make an appearance in the action within twenty days as required by Fed. R. Civ. P. 12(a). On March 8, 2002, the court granted Plaintiff's motion for a default judgment on the ground that Defendant had failed to respond to the complaint in compliance with the Federal Rules of Civil Procedure and had been declared to be in default.[1]

The matter was referred to U.S. Magistrate Judge J. Daniel Breen for a report and recommendation on Plaintiff's damages. A hearing was held on April 5, 2002, at which Plaintiff and a witness for Plaintiff appeared and testified before Magistrate Judge Breen. On April 9, 2002, Magistrate Judge Breen issued his report and recommendation that Plaintiff be awarded $50,000 in damages. On April 16, 2002, Plaintiff filed an objection to the report and recommendation, contending that he should have been awarded $12,500,000.

[1] On April 18, 2002, Defendant filed a motion to set aside the default judgment. The court denied the motion on June 5, 2002.

On April 19, 2002, Defendant filed objections to the report and recommendation.[2] For the reasons set forth below, the report and recommendation is hereby REJECTED, and the matter is REFERRED to Magistrate Judge J. Daniel Breen for a new hearing on Plaintiff's damages.

Pursuant to 28 U.S.C. § 636(b)(1)(C),

> A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

See also Massey v. City of Ferndale, 7 F.3d 506 (6th Cir.1993) (A district court has the authority to make a de novo determination of the magistrate's report or recommendations and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.") In the present case, Defendant objects to the fact that damages were awarded to Plaintiff, and both Defendant and Plaintiff object to the amount of damages awarded.

At the outset, the court notes that Defendant's argument that the report and recommendation should be rejected because Plaintiff's "factual allegations are not true and therefore plaintiff is not entitled to recover any damages from defendant" is without merit. Defendant misunderstands the nature of a default judgment. When a default judgment is entered, "facts alleged in the complaint are taken as true, except facts relating to the amount of damages, which must be proven in a supplemental hearing or proceeding." Everyday Learning Corp. v. Larson, 242 F.3d 815, 818 (8th Cir. 2001) (citing Thomson v. Wooster, 114 U.S. 104 (1885)). See also Smith v. Wade, 461 U.S. 30 (1983) ("[O]nce liability is found, the [factfinder] is required to award compensatory damages in an amount appropriate to compensate the plaintiff for his loss."); Brockton Sav. Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5 (1st Cir.1985) (With respect to damages, the default judgment requires that

[2] Fed. R. Civ. P. 72(a) provides that a party may object to a magistrate judge's order within ten days after being served with the order.

plaintiffs' allegations of fact against Sanchez "be taken as true and ... be considered established as a matter of law.") Consequently, the court must accept as true the allegations in the complaint that Defendant discriminated against Plaintiff on the basis of his race.

Defendant also contends that Plaintiff's claim goes beyond the scope of his charge to the EEOC. Defendant waived this argument by not filing an answer or otherwise participating in the action until after a default judgment had been granted to Plaintiff. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982) (Filing a charge of discrimination with the EEOC is not a jurisdictional prerequisite, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling.)

Likewise, Defendant's argument that the report and recommendation should be set aside because it was not notified of the hearing on damages is without merit. Fed. R. Civ. P. 5(a) provides, in relevant part,

> No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

Rule 55(b)(2) provides that notice of a motion for a default judgment shall be given to the party against whom judgment is sought if the party has made an appearance. Here, Defendant was in default and had not made an appearance; thus, notice was not required.

The court, however, is persuaded by Defendant's argument that the report and recommendation should be rejected because it does not differentiate between back pay, front pay, and compensatory damages but, instead, recommends a lump sum award of $50,000. To be eligible for compensatory damages, a plaintiff is required to prove that the defendant's unlawful actions caused him emotional distress. Carey v. Piphus, 435 U.S. 247, 263-64 (1978). Any award for emotional injury greater than nominal damages must be supported by evidence of the character and severity of the injury to the plaintiff's emotional well-being. Giles v. Gen. Elec. Co., 245 F.3d 474, 488 (5th Cir.2001). A plaintiff's own testimony, along with the circumstances of a particular case, can suffice to sustain the plaintiff's burden in this

regard. Meyers v. City of Cincinnati, 14 F.3d 1115, 1119 (6th Cir. 1994). Specific findings of fact pertaining to the injuries suffered by the plaintiff are necessary to ensure that the record supports the award of compensatory damages. See Black v. Armstrong Rubber Co., 1989 WL 2116 (6th Cir.) ("Because the district court made specific findings of fact pertaining to the injuries suffered by Black, the award of compensatory damages to Black is sufficiently nonspeculative to be affirmed.") See also Hare v. H & R Industries, Inc., 2002 WL 777956 (E.D. Pa.) ("Compensation for pain and suffering should have been separately noted rather than lumped in with the punitive damage amount, however, as the total amount of award remains the same, the Court declines to modify the award.")

Accordingly, the report and recommendation is hereby REJECTED, and the matter is REFERRED to Magistrate Judge J. Daniel Breen for a new hearing on damages with specific findings being made as to whether Plaintiff is entitled to back pay, and/or compensatory damages, and/or front pay or reinstatement and, if so, the amount to which he is entitled in each category. At the hearing, both Plaintiff and Defendant will have the opportunity to present evidence on the issue of damages.

IT IS SO ORDERED.

_____
JAMES D. TODD
UNITED STATES DISTRICT JUDGE

_____
DATE